

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No. 1396 of 1997

With

FIRST APPEALS No. 1397 to 1402 of 1997

With

CIVIL APPLICATIONS No. 6044 of 1997 to 6050 of 1997.

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For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

AND

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SPECIAL LAND ACQUISITION OFFICER & OTHERS

Versus

JAGDISHBHAI MAGANBHAI & OTHERS

Appearance:

Mr. Mukesh Patel, Asst.Government Pleader for the appellants.

MR AJ PATEL for Respondent No. 1.

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE H.R.SHELAT

Date of decision: 03/07/97

ORAL JUDGEMENT (Per: J.N. Bhatt, J.)

The short but substantial question which has been raised in this group of appeals under Section 54 of The Land Acquisition Act (Act) is whether the amount of compensation for the acquisition of land in terms of market value awarded by the Reference Court in a composite award at the rate of Rs.650/- per Are of agricultural lands raising the rate from Rs. 45/- per Are awarded by the Land Acquisition Officer is justified or not.

2. With a view to examine the aforesaid question and resultant aspect, we would like to highlight a few relevant facts in this common judgment upon the joint request, and in the light of the facts and circumstances;

1. The lands acquired and covered under the Land Reference group under consideration are of Nandarkha village;

2. They are agricultural and fertile lands;

3. The acquisition came to be made by virtue of a preliminary notification under Section 4 (1) of the Act for the purpose of Luwara branch Canal of a celebrated Narmada Project. Publication of the notification under Section 4(1) was on 3-2-1986. Pursuant to the said notification, lands were sought to be acquired in a Land Reference Case No. 34 of 1984 and the Land Acquisition Officer after considering the facts and circumstances offered and made award on 25-1-1988 making assessment of market value at the rate of Rs. 45/- per Are against the claim of Rs. 1,100/- made by the claimants-respondents herein in this group of appeals;

4. The Written Statement came to be filed at Exh.4 inter alia contending on behalf of the appellants that the award of Land Acquisition Officer in connection with a Land Reference Case No. 1239 of 1988 at the rate of Rs. 650/- per Are recorded on 30-9-1996 is not a reliable and comparable award;

5. Admittedly no sale instances of last 5 years, before the impugned award came to be passed by the Land Acquisition Officer, had been made;

6. After considering the rival versions and the evidence, the Reference Court decided Issues at Exh.5 in favour of the claimants holding that the

just and reasonable assessment of market value should be at the rate of Rs.650/- per Are against the rate of Rs. 45/- awarded by the Land Acquisition Officer.

3. After having considered the facts and circumstances emerging from the record of the present case and the evidence on record, the copies whereof had been supplied by the learned advocates appearing for the parties and the various submissions made before this Court, it becomes crystal clear that the reliance placed by the Reference Court, in absence of any sale instances on an award of the District Court made in respect of some parcels of agricultural lands of Village Nandarkha which was produced at Exh. 10, was rightly made. In our opinion, the award, which has become admittedly final between the parties produced at Exh.10, is relevant, material and comparable for the purpose of determining just and reasonable amount of market value of the lands acquired.

4. In this connection, it would be pertinent and expedient to mention that the award Exh. 10 relied on by the Reference Court is covering the parcels of land adjoining the parcels of land covered under the impugned award. In that matter of award Exh.10, the notification under Section 4(1) came to be published on 27-3-1986. This award is based on the sale instance which was produced before the Court for the purpose of assessment of market value. The award, therefore, at Exh.10 is founded upon the evidence relied on by the parties and which has now become final since no proximate sale instances are available, no evidence was led for yield purposes. It was therefore just, right and reasonable for the court to consider award Exh.10. The award Exh.10 granted market value at the rate of Rs.650/- per Are in respect of the parcels of land which are adjoining to the parcels of agricultural lands under the impugned award. It would also be interesting to refer and mention that the dates are different in respect of publication of the notification under Section 4(1) but the purpose is common, the project is common, and the lands covered under both the awards are of the same village. The notification under Section 4(1) which was issued in the award which has been relied on by the Reference Court at Exh.10 had been issued after the issuance of the notification under Section 4(1) in the present case. In the present case, the notification under Section 4(1) came to be published on 3-2-1986 whereas in the award which is relied on, the notification under Section 4(1) came to be published on 27th March 1986.

5. In our opinion, after having placed into scale the entire bunch of facts, the rival versions, the assessment of market value at the rate of Rs.650/- per Are raising from Rs. 45/- per Are is quite just, reasonable and proper. We have no hesitation in finding that the Reference Court rightly placed reliance on the award Exh.10 in absence of any sale instance or any material to make an assessment on yield basis. The principles governing the amount of award enunciated in Section 23 of the Act have been taken into consideration by the Reference Court in the light of the facts and circumstances and has reached to a correct conclusion of awarding the market rate of Rs.650/- per Are. The reasons assigned in support of the ultimate conclusion have also remained unimpeachable. Nothing has been successfully shown which would warrant our interference in this group of appeals in so far as the fixation of the market rate at Rs.650/- per Are is concerned. Therefore, we have no hesitation in confirming that finding of fact.

6. The next question which would lead us to the appreciation and examination is as to whether the principles enshrined in Section 23(1-A) and Section 23(2) of the Act have been rightly observed and considered or not in the composite impugned awards. After having examined the facts and circumstances and the chart and the graph prepared by the Reference Court, we find that the provisions of Section 23(1-A) and Section 23(2) have not been correctly appreciated. We would also like to mention and refer the ratio propounded by the Hon'ble Apex Court in Prem Nath Kapur and Another vs. National Fertilizers Corporation of India and Others, reported in (1996) 2 SCC 71. After considering the aforesaid principles of law and the ratio of the Prem Nath Kapur's case (Supra), the impugned composite award is required to be sliced down, as in our opinion, the claimants are not entitled to;

1. Interest awarded on the additional amount payable under Section 23(1-A) of the Act and also solatium under Section 23(2) of the Act; and
2. No solatium on the additional amount under Section 23(1-A) of the Act.

The impugned composite award needs to be modified to that extent.

7. In the result, all these appeals are partly allowed. The common judgment and composite impugned

award dated 25-1-1988 recorded by the District Court, Bharuch, in the group of Land Reference Case No. 34/84 and Land Reference Applications No. 1232 to 1238 of 1988 shall stand modified to the aforesaid extent. We may, however in other words, clarify that the claimants shall not be entitled to (1) interest awarded on the additional amount payable under Section 23(1-A) of the Act and also solatium under Section 23(2) of the Act; and (2) No solatium on the additional amount under Section 23(1-A) of the Act.

8. Before parting, we hereby also direct the appellants to deposit the award amount of compensation with proportionate costs and interest as enumerated and indicated hereinbefore by us, within a period of four weeks from today, if not so far paid. Having regard to the peculiar facts and circumstances, we direct the parties to bear their own costs. There shall be no orders on the Civil Applications No. 6044 of 1997 to 6050 of 1997.

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